Supreme Court, U.S.
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No. 96-655

In The

Supreme Court of the United States

October Term, 1996

HANNAFORD BROS. CO.,

Petitioner,

v.

THERESA CIAMPI,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Judicial Court Of Maine

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a provision of a state workers' compensation statute requiring an employer to include the value of an injured worker's discontinued fringe benefits in determining the worker's pre-injury average weekly wage, upon which the workers' compensation benefit rate is based, but not imposing legal, structural or benefit requirements on any ERISA-covered employee benefit plan "relates to" such a plan within the meaning of ERISA's preemption provisions.

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BRIEF IN OPPOSITION

The Respondent, Theresa Ciampi, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the opinion of the Maine Supreme Judicial Court in this case.

OPINIONS BELOW

The opinion of the Maine Supreme Judicial Court sought to be reviewed by the Petitioner is correctly set forth in Petitioner's Appendix.

STATUTORY PROVISIONS INVOLVED

Petitioner correctly observes that this case involves both the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461, and provisions of the Maine Workers' Compensation Act of 1992 ("MWCA"), 39-A M.R.S.A. §§ 101-909 (Supp. 1996). Petitioner correctly sets forth the relevant provisions of both statutes.

STATEMENT OF THE CASE

On January 30, 1993, the Respondent, Theresa Ciampi, suffered a compensable injury while working for the Petitioner, Hannaford Brothers. At the time of her injury Respondent's average weekly wage was $389.30 without the inclusion of the value of her fringe benefits. As part of her compensation package, Petitioner provided

Respondent with medical and dental health insurance, disability and group life insurance, a defined benefit retirement plan and a 401(k) plan.

Pursuant to 39-A M.R.S.A. § 102(4)(H), Respondent petitioned the Maine Workers' Compensation Board (hereinafter "Board") to include the value of her fringe benefits in its calculation of her average weekly wage. The Petitioner opposed the petition on the ground that ERISA preempted § 102(4)(H). The Board ordered that the value of the Respondent's fringe benefits be included in the calculation of her average weekly wage but did not address the issue of ERISA preemption finding that such a determination was beyond its jurisdiction. The Petitioner, having preserved the issue of ERISA preemption, sought review of the Board's order with the Maine Supreme Judicial Court.

The Supreme Judicial Court granted Petitioner review of the Board's order and held that 39-A M.R.S.A. § 102(4)(H) is not preempted by ERISA because it has only a "tenuous, remote or peripheral" connection with ERISA covered benefit plans. *Ciampi v. Hannaford Bros. Co.*, 681 A.2d 4 (Me. 1996).

REASONS FOR DENYING THE WRIT

The decision below in no way sanctions any attempt by the State of Maine either to evade this Court's holding in *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125, 113 S.Ct. 580, 121 L.Ed.2d 513 (1992) or to directly impact on ERISA plans by encouraging employers to continue paying fringe benefits during the

course of an employee's disability. On the contrary, the Maine Supreme Judicial Court found, after a search of the legislative record surrounding the enactment of the challenged provision, that the Maine Legislature had manifested no intent to directly impact ERISA plans. The Maine Court also properly concluded, as will be set forth more fully below, that the workers' compensation provision in question was not preempted by ERISA in light of this Court's holdings in *Greater Washington* and *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, ___ U.S. ___, ___, 115 S.Ct. 1671, 1674-75, 131 L.Ed.2d 695 (1995).

As a further basis for concluding that the Maine legislature had not intended to directly impact ERISA plans by encouraging employers to continue fringe benefits during the course of an injured worker's disability, the Court pointed out that § 102(4)(H) does not require that employers in all instances include the value of fringe benefits in calculating an injured worker's average weekly wage. Under the Maine approach, the value of fringe benefits is only included in those instances in which an injured worker's average weekly wage is less than two-thirds of the average weekly wage in the state. This unique feature of the Maine statute implicates ERISA to a lesser degree than broader statutes enacted in other states which have nevertheless withstood ERISA challenges identical to those advanced here by Petitioner. *See e.g.* Kan. Stat. Ann. 44-511(a)(2)(E). Those broader statutes have required that the value of discontinued fringe benefits be included in all instances when determining an injured worker's average weekly wage for the purposes of arriving at a statutory compensation rate, not just

those instances when an injured worker's average weekly wage failed to exceed a statutory floor.

Petitioner has presented no evidence to this Court of the existence of any intent by the Maine legislature to circumvent this Court's holding in *Greater Washington*. Therefore, even assuming, for the sake of argument only, the accuracy of Petitioner's assertions of "attempts" by other state legislatures around the nation to "evade" the Federal scheme that is at the heart of ERISA, or this Court's holding in *Greater Washington*, this case would not, in any event, present an opportunity to grapple with that precise issue.

Finally, despite the identification of "fringe benefit" provisions in other jurisdictions similar to the provision enacted in Maine, at least one of which dates back to 1985 (Petition for Cert. at 10), Petitioner has failed to cite a single case to this Court in which any tribunal in the identified jurisdictions has found such a provision to be preempted by ERISA.

I. THE DECISION BELOW IS CONSISTENT WITH THE CONGRESSIONAL INTENT UNDERLYING ERISA AND POSES NO THREAT TO FEDERAL REGULATORY UNIFORMITY.

ERISA is intended to prevent states and their political subdivisions from taking actions that directly or indirectly regulate ERISA-covered employee benefit plans. The broad preemptive language utilized by Congress was designed to ensure that a uniform body of law would be applied to ERISA-covered employee benefit plans in

order to minimize the administrative and financial burden of complying with conflicting directives among states or between states and the Federal government. *Ingersoll-Rand Co. v. Perry McClendon*, 498 U.S. 133, 111 S.Ct. 478, 112 L.Ed.2d 474 (1990).

Courts have consistently recognized, however, that "ERISA's preemptive reach, although broad, is not unlimited." *Raymond v. Mobil Oil Corp.*, 983 F.2d 1528, 1538 n.14 (10th Cir. 1993), *cert. denied*, 510 U.S. 822, 114 S.Ct. 81, 126 L.Ed.2d 49. Moreover, " 'a preemption provision designed to prevent state interference with Federal control of ERISA plans does not require the creation of a fully insulated legal world that excludes these plans from regulation of any purely local transaction . . . ' ERISA was not meant to consume everything in its path." *Hook v. Morrison Milling Co.*, 38 F.3d 776, 786 (5th Cir. 1994).

Congress provided an even more specific bar to unchecked ERISA preemption by expressly exempting "state workers' compensation schemes from ERISA's purview, leaving intact the states' traditional regulation and oversight of this specialized system of insurance." *Combined Management, Inc. v. Superintendent of the Bureau of Ins. of State of Me.*, 22 F.3d 1, 4 (1st Cir. 1994), *cert. denied*, 115 S.Ct. 350, 130 L.Ed.2d 306.

The challenged provision is a part of the Maine Workers' Compensation Act and imposes no legal or regulatory burden on ERISA-covered employee benefit plans. Petitioner nevertheless contends that review of the decision below, and ultimately § 102(4)(H) of the Maine Workers' Compensation Act, is necessary because "the 'value of benefits' approach is acquiring a momentum

that poses a present, nationwide threat to the uniform regulation of ERISA benefits mandated by Congress." (Petition for Cert. at 10).

There is nothing in the challenged provision that runs afoul of the regulatory uniformity intended by Congress when enacting ERISA. At most, Petitioners have alleged, although not persuasively demonstrated, possible economic effects resulting from an employer's being required to include the value of an injured worker's discontinued fringe benefits for purposes of calculating the average weekly wage upon which the workers' compensation benefit is to be based. Petitioner provides as an example the hypothetical and extra-record case of an employer being "effectively precluded" from requiring an employee who is a COBRA beneficiary to pay the full cost of his or her coverage. (Petition for Cert. at 12). Petitioner argues that because the value of an employee's COBRA coverage may ultimately be reflected in an increased average weekly wage, it is effectively precluded from collecting the employee's contribution to the COBRA plan. What Petitioner ignores is that it at all times retains the ultimate discretion as to whether to provide any benefits in the first place. COBRA is not relevant and could not come into play absent an existing employee benefit plan that was voluntarily offered by an employer. Furthermore, there is no practical reason that an employer, under the scenario presented in the Petitioner's hypothetical, could not simply change the mix of benefits to wages it supplied to an employee, or of one type of benefit to another type, to account for any perceived COBRA "shortfall." These are economic decisions that are best made by Petitioner and are no different than

other economic decisions it must make as an employer in light of the various existing state and federal regulatory regimes. State and federal regulations with respect to taxation presumably also have an impact upon ERISA plans and yet Petitioner would face a difficult task in attempting to argue that tax codes are consequently pre-empted by ERISA.

Moreover, Petitioner's contentions that the proper exercise of state authority may pose a threat to "Federal regulatory uniformity" was firmly rejected by the Third Circuit in *Keystone Chapter Assoc. Builders v. Foley*, 37 F.3d 945 (3rd Cir. 1994), *cert. denied*, 115 S.Ct. 1393 (1995). *Keystone Chapter* addressed the Pennsylvania Prevailing Wage Act and found that it was not preempted even though some of the benefits included in the prevailing wage calculation could include ERISA plan benefits. Noting that wage laws traditionally fall within the sphere of the state's police power, the *Keystone* court stated:

> ERISA's preemption clause aims "to ensure benefit plans will be governed by only a single set of regulations," not to bestow on employers a uniform regulatory and economic environment for all their activities across the country. Because states enact their own wage and non-ERISA benefits regulations . . . employers must adjust their operations according to locale. This administrative and financial burden arises from the "patchwork scheme" of our federal system, a system whose "separate spheres of governmental authority" were not preempted by ERISA.

Id. at 960 (internal citations omitted).

As *Keystone* makes clear, the operation of dissimilar workers' compensation laws throughout the nation is no greater threat to Federal regulatory uniformity than the operation of dissimilar wage laws. In both areas of legislation, states have been afforded wide discretion. *Raymond v. Mobil Oil Corp.*, 983 F.2d at 1538 n.14. The *Raymond* court instructed that:

> Laws that have been ruled preempted are those that provide an alternative cause of action to employees to collect benefits protected by ERISA, refer specifically to ERISA plans and apply solely to them, or interfere with the calculation of benefits owed to an employee. Those that have not been preempted are laws of general application – often traditional exercises of state power or regulatory authority – whose affect on ERISA plans is incidental.

Id.

Thus, to the extent that 39-A M.R.S.A. § 102(4)(H) participates in a nationwide "trend", that trend consists only of permissible state legislation within the appropriate ambit of state power. Furthermore, the challenged Maine provision does not refer specifically to ERISA plans, it does not apply solely to ERISA plans and it does not in any way interfere with the calculation of benefits owed to an employee. The calculation of an injured worker's average weekly wage is a traditional exercise of state power. *See Combined Mgt.*, 22 F.3d at 4. That exercise has only an incidental impact upon an ERISA plan because it does not mandate an employer or the administrator of a plan to do anything at all. *See Lawrence Paper*

Co. v. Gomez, 257 Kan. 932, 897 P.2d 134, 143 (1995), *cert. denied*, 116 S.Ct. 187, 133 L.Ed.2d 124 (1995).

Notwithstanding the directive of § 102(4)(H), an employer may decline to offer any or all employee welfare benefit plans, it may terminate any or all of its employee welfare benefit plans or it may alter the proportional mix of benefits and wages in its overall benefit package at its sole discretion. If the Petitioner fails to exercise these options in an effort to maintain its competitiveness in the labor marketplace that is its choice.

II. THE COURT BELOW WAS CORRECT ON THE MERITS BECAUSE IT UNDERSTOOD AND PROPERLY APPLIED THIS COURT'S RECENT HOLDINGS IN *GREATER WASHINGTON BOARD OF TRADE* AND *BLUE CROSS* AND CORRECTLY FOUND, IN LIGHT OF THOSE HOLDINGS, THAT THE CHALLENGED MAINE LAW HAS ONLY A "TENUOUS, REMOTE OR PERIPHERAL" RELATIONSHIP TO ERISA PLANS THAT DOES NOT WARRANT A FINDING OF ERISA PREEMPTION.

The ERISA preemption invoked by Petitioner and properly applied by the Maine Supreme Judicial Court in this case states:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and now exempt under section 1003(b) of this title.

29 U.S.C. § 1144(a).

Employee benefit plans described in section 1003(a) and subject to ERISA coverage are employee welfare benefit plans and employee pension benefit plans.

The test for determining whether a state law or regulation "relates to" an ERISA benefit plan is whether "in the normal sense of the phrase . . . it has a connection with or reference to such a plan." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97, 103 S.Ct. 2890, 2900, 77 L.Ed.2d 490 (1983).

Among the employee benefit plans exempted from ERISA coverage are those "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability laws." *Greater Washington*, 506 U.S. at 127.

The Petitioner argues that the decision below rendered by the Supreme Judicial Court of Maine is inconsistent with this Court's opinion in *Greater Washington*. The District of Columbia statute found to be preempted under ERISA by the *Greater Washington* Court, however, is completely distinguishable from the Maine provision that is under consideration here. The District of Columbia statute preempted by *Greater Washington* required employers who furnished health insurance coverage for their employees to continue to furnish equivalent insurance to injured employees receiving workers' compensation benefits. It stated:

> Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing

> health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this chapter.

D.C. Code Ann. § 36-307(a-1)(1)(1992).

The Maine Supreme Judicial Court rightly observed that the District of Columbia statute "compelled employers to provide an ERISA type benefit for employees receiving workers' compensation benefits." (Petitioner's App. at 6). In effect, an employer within the District of Columbia who established an ERISA-covered health insurance plan was not free to terminate that plan and subsequently provide no equivalent health insurance plan or coverage.

The Maine Supreme Judicial Court properly contrasted the Maine provision at issue with the preempted District of Columbia statute. The Maine provision contains no employer mandate with respect to its offering, operation, administration or termination of an ERISA plan, as had the statute under consideration in *Greater Washington*. The Maine Supreme Judicial Court concluded that the Maine provision "has only an indirect impact on ERISA-regulated plans." (Petitioner's App. at 6). The Court, citing *Greater Washington*, 506 U.S. at 130 n. 1, 113 S.Ct. at 583 n. 1, concluded that any connection between the Maine provision permitting the inclusion of fringe benefits provided under an ERISA plan for the purpose of calculating an employee's workers' compensation rate, under traditional state laws of workers' compensation, and the ERISA plan *itself* was "tenuous, remote and peripheral." (Petitioner's App. at 11).

The Maine Court buttressed its conclusion by responding briefly to Petitioner's economic arguments. Petitioner has continually argued that, "in a real economic sense," requiring employers to pay the *value* of a benefit is no different than requiring the *furnishing* of an equivalent benefit. (Petition for Cert. at 12). Citing this Court's holding in *New York State Conf. of Blue Cross*, ___ U.S. ___, ___, 115 S.Ct. 1671, 1679 (1995), the Maine Court stated:

> " . . . ERISA does not shield plan administrators from any and all possible economic influences that may arise from state laws or regulations. Many traditional areas of state regulation, such as the regulation of workplace conditions or the formulation of quality standards for hospital services, can affect the cost of an ERISA plan but are not superseded by ERISA because they have only an indirect effect on plan administration."

(Petitioner's App. at 7).

Simply put, the purported economic impact of a state law or regulation upon an ERISA plan is of no legal consequence for purposes of ERISA preemption analysis. Furthermore, Respondent submits that, in any event, the issue of the future economic impact of the Maine provision upon Petitioner is so speculative that, even were it legally cognizable, it would not be sufficiently developed by Petitioner to be ripe for review by this Court.

Finally, although not specifically addressed by the Maine Supreme Judicial Court in the decision below, Respondent submits that there is a clear difference between state laws and regulations that may arguably "relate to" ERISA employee benefits plans and those that

relate more generically and generally to employee benefits. This distinction was first identified in *Fort Halifax Packing Co. v. Coyne,* 482 U.S. 1, 107 S.Ct. 2211, 96 L.Ed.2d 1 (1987), and reaffirmed in *Ingersoll-Rand Co.* The distinction was most recently applied by the Tenth Circuit in *Guidry v. Sheet Metal Workers Nat. Pension Fund,* 39 F.3d 1078 (10th Cir. 1994).

In *Guidry,* a Colorado statute exempting 75 percent of disposable earnings from garnishment included pension or retirement benefits within its definition of "disposable earnings." The *Guidry* court, while acknowledging that the Colorado law did "refer generally to pension benefits . . . ," went on to point out that it did "not refer to ERISA benefits specifically nor [did] it refer to ERISA plans." *Id.* at 1085. The distinction between ERISA employee benefits and ERISA employee benefit plans was also explained:

> As the Supreme Court has pointed out, "ERISA's preemption provision does not refer to state laws relating to 'employee benefits,' but to state laws relating to 'employee benefits plans." Because Colorado law here refers to benefits rather than plans, "the language of the ERISA presents a formidable obstacle to [preemption]."

Id. (internal citations omitted).

Just as was the case with the Colorado law under discussion in *Guidry,* § 102(4)(H) of the Maine Workers' Compensation Act makes no mention of "employee benefit plans." It refers very generally to "fringe or other benefits." It is at least arguable that this reference to "fringe or other benefits" does not refer to ERISA benefits. There can be no doubt, however, that there is no

mention whatsoever of an "employee benefit plan" within the statutory text of § 102(4)(H). For this reason alone, the Maine provision could not be preempted by ERISA.

CONCLUSION

The decision of the Supreme Judicial Court, finding no support in the legislative history for Petitioner's allegations that the Maine Legislature attempted to evade this Court's holdings in *Greater Washington* or *Blue Cross* in the enactment of § 102(4)(H) of the Maine Workers' Compensation Act, and further finding that the requirements of § 102(4)(H) did not trigger ERISA preemption under the recent holdings of this Court or, for that matter, of any court, was sound in all respects. The decision did not subvert Congressional intent in enacting ERISA nor did it conflict with Federal ERISA policy which has historically recognized a broad exemption for the operation of workers' compensation systems through the traditional exercise of state power.

Respectfully submitted,

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